

11-1351 LEVIN V. UNITED STATES, ET AL.

DECISION BELOW: 663 F.3d 1059

LOWER COURT CASE NUMBER: 09-16362

QUESTION PRESENTED:

10 U.S.C. § 1089 concerns the defense of military medical personnel against claims for tortious acts committed in the scope of employment. It directs that suits may be brought only against the United States under the Federal Tort Claims Act, which waives sovereign immunity.

28 U.S.C. § 2680 (h) of the FTCA excludes some suits, including battery, from its waiver.

Subsection 1089 (e) states, "For purposes of this section, the provisions of section 2680 (h) ... shall not apply to any cause of action arising out of a ... wrongful act ... in the performance of medical ... functions "

The particular question presented is whether suit may be brought against the United States for battery committed to a civilian by military medical personnel acting within the scope of employment.

The broader question raises the same issue for the same and other claims against groups of government employees whose defense would fall under similarly worded statutes.

This Court has never addressed these issues.

CERT. GRANTED 9/25/2012